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Attorneys for Defendant Lincare, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

KASEY MARJAMAA	)	No. _____
	)	
Plaintiff,	)	PETITION AND NOTICE
	)	OF REMOVAL
vs.	)	
	)	
LINCARE, INC.,	)	
	)	
Defendant.	)	

TO: Plaintiff Kasey Marjamaa  
c/o her attorney, Adam Cook  
Everett Law, PLLC  
217 East Park Avenue  
P.O. Box 969  
Anaconda, MT 59711

Montana Third Judicial District Court, Deer Lodge County  
800 Main Street  
Anaconda, MT 59711

**PLEASE TAKE NOTICE** that Defendant Lincare, Inc. (“Defendant”), by and through its undersigned counsel, hereby files this Petition and Notice of Removal to remove this action from the Montana Third Judicial District Court, Deer Lodge County, State of Montana, to the United States District Court for the

District of Montana, Butte Division,<sup>1</sup> and gives notice thereof in accordance with 28 U.S.C. §1446 upon the following grounds:

1. The Civil Action No. DV-18-11 entitled Kasey Marjamaa, Plaintiff, vs. Lincare, Inc., Defendant, was commenced against Defendant in the Third Judicial District Court of the State of Montana, in the County of Deer Lodge on or about January 9, 2018. Copies of the Complaint and Summons in that action are attached here as **Exhibits 1 & 2**. A copy of the Complaint and Summons was served on Lincare, Inc., through CT Corporation, on January 16, 2018. A copy of the Service of Process is attached here as **Exhibit 3**.

2. This Notice of Removal is timely. 28 USC §1446(b) requires a Notice of Removal be filed “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based ...” Defendant, through CT Corporation, was served with the Summons and Complaint on January 16, 2018, within 30 days prior to filing this notice. See **Exhibit 3**.

3. The above-captioned action is a civil action over which this Court would have jurisdiction pursuant to 28 USC §1332(a)(1), because it is between

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<sup>1</sup> Lincare reserves its right to argue *forum non conveniens* as the alleged “tort” took place in Sidney, Richland County, MT; the place of performance was Sidney, Richland County, MT; Plaintiff lived and worked in Sidney, MT during the tenure of her employment; and no witnesses or documents are in Anaconda, MT.

citizens of different states. Plaintiff is a citizen of Montana. Defendant is a Delaware corporation with its principal place of business in Clearwater, Florida.

4. Lincare is a wholly-owned subsidiary of Lincare Holdings Inc., which is incorporated and existing under the laws of the State of Delaware with its principal place of business in Clearwater, Florida. Lincare Holdings, Inc. is a wholly owned subsidiary of Linde North America Holdings, LTD., which is a company limited by shares existing under the laws of the United Kingdom with its principal place of business in Guildford, England. Linde North American Holdings, LTD is a wholly-owned indirect subsidiary of Linde, AG, which is company existing under the laws of Germany with its principal place of business in Munich, Germany. Lincare's Corporate Disclosure Statement is attached here as **Exhibit 4.**

5. Subject to arguments as to *forum non conveniens*, venue is proper in the Butte Division as this Division includes Deer Lodge County under Rule 1.2(c)(4) of the Local Rules of Procedure of the United States District for the District of Montana. This is a claim wrongful discharge from employment and considered a tort action. If, as here, the Defendant is a foreign entity and does not reside in Montana, venue by statute is proper in "the county in which the tort was committed" or "the county in which the plaintiff(s) resides." §§ 25-2-118(2); 25-2-122(2)(a).

6. Plaintiff was employed in Sidney, Richland County, Montana but alleges that she now is a citizen of Anaconda, Deer Lodge County, Montana. *See* Complaint at ¶I. Plaintiff alleges that she suffered damages when she was wrongfully discharged from her employment in Sidney, Montana.

7. Plaintiff's Complaint does not state a definite amount of damages, but requests four years of lost wages and benefits, as well as other wages (unpaid vacation), penalties, and attorney fees.

8. Plaintiff was a Center Manager for Lincare, Inc. in Sidney, Montana. She earned \$23.0038 an hour and \$47,857.26 on an annual basis. Plaintiff also received health, dental and vision insurance as an employee benefit valued at \$3963.60 on an annual basis and an annual 401K contribution in the amount of \$828.36. Thus, her total annual compensation was \$52,649.22. Accounting for a demand of four years of wages and benefits, the amount in controversy is well over \$75,000. This exceeds the jurisdictional amount. Accordingly, this matter may be removed to this Court.

9. Defendant has served a copy of this Notice of Removal upon Plaintiff through their counsel of record and will file a copy with the Clerk of the District Court with the Montana Third Judicial District of the State of Montana, in and for the County of Deer Lodge within seven days—as permitted by Local Rule 3.3(a)

of the Local Rules of Procedure for the U.S. District Court for the District of Montana.

WHEREFORE, Defendant prays that the above entitled action be removed from the Third Judicial District Court, County of Deer Lodge, State of Montana, to the United States District Court for the District of Montana, Butte Division.

DATED this 12th day of February, 2018.

By: /s/ Jean E. Faure  
Jean E. Faure  
FAURE HOLDEN ATTORNEYS AT LAW, P.C.  
Attorneys for Defendant Lincare, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12th day of February, 2018, I electronically filed the foregoing document, with the U.S. District Court, and served the same by e-mail on counsel of record listed below.

Adam Cook  
Everett Law, PLLC  
P.O. Box 969  
Anaconda, MT 59711

By: /s/ Jean E. Faure  
Jean E. Faure  
FAURE HOLDEN ATTORNEYS AT LAW, P.C.  
Attorneys for Defendant Lincare, Inc.